STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN REHABILITATION SPECIALISTS OF SOUTH LYON, INC. and MICHIGAN REHABILITATION SPECIALISTS, INC., Plaintiffs-Appellants,	UNPUBLISHED April 23, 2013
v	No. 306828 Oakland Circuit Court
MATTHEW A. BROSTROM, MICHELLE KLATY, and SPINE AND EXTREMITY INSTITUTE OF SOUTH LYON, L.L.C., d/b/a BROSTROM PHYSICAL THERAPY, Defendants-Appellees.	LC No. 2010-111449-CK

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of dismissal, which enforced a settlement agreement between plaintiffs and defendants. We affirm.

This appeal involves challenges to the enforceability of a settlement agreement. The parties dispute whether they reached an agreement concerning the terms of a settlement enforceable under MCR 2.507(G). Plaintiffs initially maintain that the trial court erroneously dismissed the case based on an incomplete settlement agreement, which neglected to resolve all matters concerning an accurate valuation of defendants' interest in Michigan Rehabilitation Specialists of South Lyon, Inc. (MRSSL). Plaintiffs assert that the settlement did not take into account the litigants' agreement that plaintiffs would receive set offs against the valuation of defendants' interest in MRSSL for company loans to Matthew A. Brostrom.

The ultimate decision whether to enforce a settlement agreement in within a trial court's discretion and will be not reversed absent an abuse of that discretion. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). However, the interpretation and application of MCR 2.507(G) is a question of law that this Court reviews de novo. See *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 456, 458; 733 NW2d 766 (2006) (stating that "Michigan courts construe court rules in the same way that they construe statutes"). "A contract for the settlement of pending litigation that fulfills the requirements of contract principles will not be enforced unless the agreement also satisfies the requirements of MCR 2.507[G]." *Id.* at 456. In relevant

part, MCR 2.507(G) provides that a settlement agreement between litigants "is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney."[1]

> The existence and interpretation of a contract are questions of law reviewed de novo. An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts. Before a contract can be completed, there must be an offer and acceptance. Unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed. Further, a contract requires mutual assent or a meeting of the minds on all the essential terms. [*Kloian*, 273 Mich App at 452-453 (internal quotation and citations omitted).]

Our review of the record reveals that the trial court correctly enforced the parties' settlement agreement. The parties' settlement negotiations began on the record at a hearing on July 7, 2010. Plaintiffs suggest that no binding settlement agreement existed as of July 2010, given that "[u]nresolved issues lingered regarding the valuation of . . . Brostrom's interest in MRSSL and exactly how the amount owed . . . would be calculated." This suggestion would have merit if we limited our review to the July 7, 2010 transcript and a July 8, 2010 order, as plaintiffs do in their argument regarding this issue. The July 7, 2010 transcript reflects the parties' agreement concerning a resolution of the entire case under the following conditions: (1) that defendants adhere to a 45-day TRO against the disclosure or use of the confidential and proprietary information identified in plaintiffs' complaint; (2) that defendants continue operating Brostrom Physical Therapy after the 45-day TRO period had expired; (3) that the parties execute a mutual release of all claims or counterclaims; (4) that plaintiffs purchase Matthew A. Brostrom's and Michelle Klaty's shareholder interests in MRSSL for a value to be determined by a certified public accountant (CPA) at the Shindel Rock accounting firm; (5) that the parties split the valuation cost and share with each other the documentation supplied to the CPA; and (6) that whichever parties the CPA found where entitled to an award related to the business valuation of MRSSL, the other parties would pay that amount within 60 days. Plaintiffs' counsel expressly confirmed on the record plaintiffs' "meeting of the minds" with respect to the CPA selection.

The July 7, 2010 transcript did reveal a remaining question of the parties about what date the CPA would use as a MRSSL valuation date. But the July 8, 2010 order signed by the court, opposing counsel, and the parties, answered this query and provided: "The value of defendants' interest in . . . MRSSL is to be valued as of April 18, 2010 and in the expert's discretion, can be subject to a reduction as a result of the subsequently formed competing business [Brostrom Physical Therapy]." Although the July 8, 2010 order neglected to specifically adopt the settlement terms placed on the record on July 7, 2010, the trial court did so in its April 20, 2011 order, which stated, "[T]he settlement proceedings had on July 7, 2010 and the corresponding

[1] Plaintiffs do not challenge the sufficiency of the documentation or signatures supporting the parties' settlement agreement.

July [8], 2010 order regarding settlement does establish a meeting of the minds of the parties and that meeting of the minds is a binding contract."

Because plaintiffs sought clarifications concerning the CPA's valuation, in its April 20, 2011 order, the trial court ordered that within 30 days the parties shall "articulate in writing a query to Shindel Rock as to issues pertaining to the Shindel Rock valuation of [MRSSL]." Plaintiffs specifically only questioned the CPA regarding the nature of an April 2010 check that Brostrom had received from MSSRL (as either a shareholder distribution or a shareholder loan) in an amount exceeding $6,000, and whether Brostrom's debt in this amount to MRSSL should have factored into the MRSSL valuation. However, the CPA unambiguously responded that the MRSSL valuation had taken into account all of the concerns expressed to her by plaintiffs' founder, including that the April 15, 2010 payment to Brostrom constituted a reasonable distribution for paying income taxes, as confirmed in reviewing MRSSL's business records. The record does not support plaintiffs' suggestions that any matters remained unresolved concerning an accurate valuation of defendants' interest in MRSSL.

With respect to plaintiffs' appellate contention that Michigan Rehabilitation Specialists, Inc. (MRS), cannot share liability with MRSSL for an amount that MRSSL might owe to defendants, given that MRS does not own MRSSL, this argument ignores the settlement terms placed on the record on July 7, 2010. When the parties discussed the terms of the settlement agreement on July 7, 2010, plaintiffs' counsel repeatedly referred to plaintiffs in the plural form, particularly when stating that plaintiffs would purchase defendants' 40% ownership interest in MRSSL. And at no point in the discussion of the settlement terms did plaintiffs suggest that MRSSL alone would pay any valuation amount due to defendants. Because the record of the parties' discussions clearly and unambiguously reveals that they intended both plaintiffs to share liability for a valuation amount payable to defendants, the trial court properly rejected plaintiffs' assertion that MRS was not responsible for payment of the MRSSL valuation amount.[2]

Finally, plaintiffs assert that they are entitled to set aside the judgment pursuant to MCR 2.612(C)(1)(f). Because plaintiffs did not raise this issue below, and the trial court did not consider or decide this issue, it is unpreserved for appellate review. *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). Although this Court is not required to consider plaintiffs argument, we will briefly address this claim, which involves a question of law for which the facts necessary for resolution are in the record. *Id*.

[2] In their appellate briefs, plaintiffs also suggest that outstanding issues remained concerning defendants' violations of the 45-day TRO embodied in the settlement agreement. However, we decline to consider this suggestion because (1) at an October 12, 2011 motion hearing, plaintiffs' counsel observed that even if the trial court entered a money judgment against plaintiffs, "I still have a right to file my contempt proceeding, which I guess would be separate from this Court order"; and (2) the trial court has not decided this issue, as reflected in its October 12, 2011 order, which stated "that this action is hereby dismissed as to all claims and all parties . . . *except* the allegation as to whether defendant Brostrom violated the 45-day restraining order per the order/transcript of July 7, 201[0]." (Emphasis in original).

MCR 2.612(C)(1)(f) permits a court to set aside a judgment for any reason justifying relief other than those listed in MCR 2.612(C)(1)(a) through (e). As this Court summarized in *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992), a court may grant relief under MCR 2.612(C)(1)(f) only when the following circumstances exist:

> (1) [T]he reason for setting aside the judgment must not fall under subrules (1) through (5); (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside; and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice. [Internal quotation and citation omitted.]

"Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Id*. In this case, plaintiffs have not shown any improper conduct by defendants, and they failed to show that defendants' substantial rights would not be detrimentally affected if the settlement agreement was set aside. Finally, plaintiffs state that extraordinary circumstances exist to mandate setting aside the judgment, but have failed to state what those circumstances are. Because plaintiffs have not met the requirements of MCR 2.612(C)(1)(f), the judgment will not be set aside.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood